IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11232 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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C.K. SURTI - Petitioner(s)
Versus
G.S. DAHOTRE CHAIRMAN & MANAGING DIRECTOR & 4 - Respondent(s)

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Appearance :

MR RN SHAH for Petitioner(s) : 1,
SERVED BY RPAD - (R) for Respondent(s) : 1,
MR RAJNI H MEHTA for Respondent(s) : 1, 3, 5,
RULE SERVED for Respondent(s) : 2, 4,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 09/07/2007

ORAL JUDGMENT

1. The petitioner by preferring this petition under Article 226 of the Constitution of India has

challenged the dismissal order dated 17.07.92 passed by the respondent no.4-Deputy General Manager, Dena Bank, South Gujarat Zonal Office and also the order dated 21.01.02 passed by the respondent no.5- General Manager(Gujarat) & Appellate Authority, Dena Bank rejecting the appeal of the petitioner against the dismissal order and has in alternative prayed that the punishment imposed is shockingly disproportionate and the same be altered.

2. Mr R.N Shah, learned advocate appearing for the petitioner has submitted that the charges levelled against the petitioner were infact that of not following the procedure in disbursing the loan amount and as they are amounting to mere procedural irregularities the petitioner ought not to have been visited with the economic debt penalty of dismissal from service. He has further submitted that the inquiry proceedings had not been conducted in compliance with the provisions of natural justice and therefore the resultant dismissal order and the order of the appellate authority deserve to be quashed and set aside.

2.1 Mr Shah has submitted that the relevant documents namely the report of one Shri Pathak had not been supplied to the petitioner though Shri Pathak was examined as Management Witness during the inquiry and therefore on this account also as the principle of natural justice is violated, the resultant order of dismissal and the order of

appellate authority rejecting his appeal deserve to be quashed and set aside. He has further submitted that the copy of the inquiry report which was given was also not in true compliance with the provisions of natural justice as in a short span he was required to make his submissions on the report of the inquiry officer.

2.2 Mr Shah has also submitted that the petitioner ought not to have been visited with dire consequences of termination of service when the charge-sheet contains charges with regard to irregularities in disbursing the loan amount. Mr Shah in support of his submissions has relied upon the following decisions:

(1)In the case of Balbir Vashisht vs. National Textile Corporation reported in 2000(3)GLR 2191.
(2)In the case of Gordhanbhai Ambalal Patel vs. State of Gujarat reported in 1991(2) GLR 937.
(3)In the case of Union of India & Ors vs. Mohd. Ramzan Khan reported in AIR 1991 SC 471.
(4)In the case of T.S Rabari vs. Govt. of Gujarat reported in 1991(2) GLH 364.
(5)In the case of Managing Director, ECIL, Hyderabad etc. vs. B. Karunaka etc reported in AIR 1994 SC 1074.
(6)In the case of State of U.P vs. Shatrughan Lal & Anr. reported in AIR 1998 SC 3038.
(7)In the case of Kailashnath Gupta vs. Enquiry Officer, Allahabad Bank reported in AIR 2003 SC

1377.

(8)In the case of Vinodbhai Gujarati vs. G.S Dothre, Chairman & Managing Director, Dena Bank & Ors reported in 2001(4) GLR 3127.

3. Mr Shah's submissions are on the basis of violation of principles of natural justice and in alternative that the penalty imposed is shockingly disproportionate to the delinquency alleged. He has heavily relied on the decision of this Court in the case of Vinodbhai Gujarati (Supra) in support of his submission that identically situated employee of a particular bank who was also facing charge of committing irregularity in disbursing the loan amount and was dismissed had been ordered to be reinstated by this Court as the penalty was found to be shockingly disproportionate. Mr Shah has submitted that the present petitioner can also be atleast reinstated and be treated as having attained the age of superannuation and having retired and therefore the retirement benefits be made available to him.

3.1 He has also submitted that in case the impugned orders are set aside then his case be remanded to the authority for reconsidering his case for imposing penalty. This submission is alternative and only if incase the court is not inclined to accept the petition in its totality.

4. Mr Rajni Mehta, learned advocate appearing for the respondent-Bank has submitted that this is infact

the second round of litigation as the petitioner in fact had challenged the impugned order of termination by preferring SCA 7168/92 before this Court and this Court (Coram : DC Shrivastava, J., as he then was) had been pleased to dismiss the same by a reasoned order on 28.02.01. The order dated 28.02.01 passed in SCA 7168/92 had been challenged by the petitioner by preferring LPA No. 219/2001 which was permitted to be withdrawn alongwith the Special Civil Application and it was open to the Bank to decide the appeal that may be filed by the petitioner on its own merits.

4.1 Thereafter, the petitioner preferred an appeal under the Regulation 17 of the Dena Bank Officers Employees (Discipline & Appeal) Regulation 1976. The appellate authority has passed reasoned order after affording an opportunity of having heard to the petitioner. Mr Mehta has submitted that the said order, therefore, having become final, this second round of litigation is not maintainable.

4.2 Mr Mehta has relied upon the decision of the Apex Court in the case of **Daryao & Others vs. State of Uttar Pradesh & Ors reported in AIR 1961 SC 1457** in support of his submission that once there is a decision of the competent court between the parties the same remains binding on both the parties. In the alternative, Mr Mehta has submitted that the orders impugned in this petition deserve to be sustained as the charges levelled against the petitioner were those of serious irregularity in disbursing the loan

amount. The loan amount was disbursed to fictitious persons and fictitious documents which were supposed to have been taken on record, as a result of which the bank has suffered loss to the tune of Rs. 7.50 lakhs and therefore the petitioner was rightly dismissed and the appellate authority has also rightly rejected the appeal. He has submitted that the petition therefore deserves to be dismissed.

4.3 Mr Mehta has also submitted that the report of the inquiry officer had infact been supplied to the petitioner and the petitioner had infact submitted his written submission running into about 119 pages and therefore it cannot be said that no opportunity was given to the petitioner for offering his comments on the report of the inquiry officer. Mr Mehta has further submitted that looking to the charges levelled against the petitioner, the conduct of the inquiry officer and his finding, the decision of the disciplinary authority and that of the appellate authority go to show that the petitioner did not deserve to be continued in the bank service and the penalty imposed was rightly imposed. He has submitted that the penalty of dismissal is the only penalty which could have bee imposed on the facts and circumstances of the present case.

5. Mr Mehta has submitted that the decision heavily relied upon by Mr Shah in the case of Vinodbhai Gujarati(supra) would be of no avail to the present petitioner inasmuch as in that order this Court had

observed that no financial loss had occurred to the bank as the loanees therein had repaid the entire amount. He has also relied on the following decisions in support of his submissions:

(1)In the case of Damoh Panna Sagar Rural Regional Bank and another vs. Munna Lal Jain reported in 2005(10) SCC 84.
(2)In the case of A.C Trivedi vs. Chairman & Managing Director, Dena Bank & Ors reported in 2005(1) CLR 498.
(3)In the case of Syndicate Bank & Ors vs. Venkatesh Gururao Kurati reported in 2006(3) SCC 150.

6. This Court has heard learned counsel for the parties at length and perused the records. This Court is unable to agree with the submission of Mr Mehta, learned advocate appearing for the respondent Bank that the second round of litigation is not maintainable. The fact remains that the petitioner was infact permitted to withdraw the LPA as well as SCA and the order of the Division Bench has infact been accepted and acted upon by the respondent Bank and therefore now it would not be open to the Bank to say that the order in SCA was binding on the parties and that the second litigation was not permissible. In fact looking to the prayer made in this petition it can well be said that the second litigation is permissible and is maintainable as the petitioner has also challenged the order of the appellate authority

dated 21.01.02. In view of the same, the first contention of Mr Mehta deserves to be turned down and is accordingly turned down.

7. Having come to the conclusion that the petition is maintainable, now this Court is called upon to examine the rival contentions of the parties. The brief facts deserve to be mentioned so as to appreciate the termination in question. The petitioner who at the relevant time was employee of the bank received a charge-sheet on 16.05.89 indicating therein that about 25 borrowers were given loan amount of Rs. 30,000/- each for purchasing buffaloes on various dates by the petitioner. The names of these borrowers and other details were not collected. The borrowers were found to be fictitious and non-existing and therefore the loan of Rs. 7.50 lakhs proved to be a loss to the bank. A detailed charge-sheet is produced on page 37 of the petition.

7.1 An inquiry had been conducted and the inquiry officer held that the charges levelled against the petitioner were proved and submitted his report on 16.07.91. A copy of the report was supplied to the delinquent-petitioner vide order dated 16.07.91 and the petitioner also submitted his written submissions running into about 119 pages challenging the finding of the inquiry officer's report. The disciplinary authority did not accept the submissions of the delinquent-petitioner and on concurrent finding of the inquiry officer passed the order of termination

under Regulation 17 of the Dena Bank Officers Employees (Discipline & Appeal) Regulation 1976. The petitioner without availing the benefit of appeal, approached this Court as it is stated hereinabove by preferring SCA 7168/92 which was dismissed by this Court (Coram: D.C Shrivastava, J., as he was then) and this decision of this Court in SCA 7168/92 was challenged in LPA No. 219/91 which came to be withdrawn alongwith the SCA. Thereafter the petitioner preferred appeal before the appellate authority raising various contentions which have not found favour with the authority and the appellate authority has rejected the same vide order dated 21.01.02.

8. The decision in the case of Mohd. Ramzan Khan (supra) will have no applicability so far as the facts of the present case are concerned. It is now admitted fact that the report of inquiry officer had infact been supplied to the petitioner against which the petitioner submitted his detailed reply running into 119 pages to the disciplinary authority. Therefore the submission based on this aspect would be of no avail to the petitioner.

9. Heavy reliance is based upon the decision of this court in the case of Vinodbhai Gujarati (supra) and the same is also of no avail to the petitioner as it is noted by this Court in the case of Vinodbhai Gujarati(supra) that the delinquent therein had infact been charged with procedural irregularities in

disbursing the loan and the bank in his case did not suffer any monetary loss as the loanees in that case had deposited the entire amount whereas in the instant case the charge is that of disbursing the loan amount at the instance of third party in favour of the loanees who were found to be fictitious and non existing. The amount of Rs. 7.50 lakhs had to be written off by the bank as the same could not be recovered. The relevant documents which are the material for disbursing loan namely the guarantor papers etc were not found with the bank and therefore the petitioner cannot seek parity and equal treatment so far as the case of Vinodbhai Gujarati(supra) is concerned.

9.1 It also deserves to be noted at this stage that the main contention in case of Vinodbhai Gujarati(supra) was that of non supply of the copy of the inquiry officer's report to the petitioner therein which had actually been made part of the submission on behalf of the petitioner whereas in the instant case the report of the inquiry officer had admittedly been given to the delinquent-petitioner and he was given opportunity to make his submissions. Thus, on this account also it can be said that the reliance placed in the case of Vinodbhai Gujarati (supra) would be of no avail to the petitioner.

10. The submission namely that Shri Pathak's report has not been supplied is also not borne out by the record as it appears from the record that the

relevant documents were infact supplied and all the opportunities which were required to be given to the petitioner had infact been given. The order of the disciplinary authority as well as that of appellate authority go to show that there was complete compliance with the principles of natural justice. Thus, on this account also it cannot be said that the orders impugned in this petition deserve to be interfered with at this stage. Ample opportunities were given to the petitioner and the principles of natural justice have been followed and therefore the petitioner cannot be permitted to raise any grievance in this matter.

11. This brings us to the alternative contention that the penalty was shockingly disproportionate to the charges levelled and therefore the matter deserves to be remanded to the concerned authority. This Court is unable to agree with the submission of Mr Shah so far as this contention is concerned. Looking to the nature of charges that the fictitious accounts were opened and the loan was disbursed to non existing persons at the instance of third party and that the bank could not recover a single farthing out of Rs. 7.50 lakhs loan amount, the same cannot be said to be merely procedural irregularity so as to take away the seriousness from it. In fact the charges were serious and therefore the penalty imposed is absolutely just and proper.

12. In the result, the petition fails and therefore

is required to be dismissed. This petition stands dismissed accordingly. Rule is discharged. Interim relief if any stands vacated forthwith.

(S.R.BRAHMBHATT, J.)

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